No. 14824

# In the United States Court of Appeals for the Ninth Circuit

SEABOARD LEMON ASSOCIATION, PETITIONER

*v.*

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

*ON PETITION FOR REVIEW AND REQUEST FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD*

## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD


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### JURISDICTION

This case is before the Court upon the petition of Seaboard Lemon Association to review and set aside an order of the National Labor Relations Board (R. 65–68)[1] issued against petitioner on April 13, 1955, following the usual proceedings under Section 10 (c) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Sec. 151, *et seq.*), hereafter called the Act. In its answer (R. 79–83) the Board has requested enforcement of its order. This Court has jurisdiction of the proceeding pursuant to Section

[1] References to portions of the printed record are designated "R." Wherever in a series of references a semicolon appears, references preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

10 (e) and (f) of the Act, the unfair labor practices having occurred at petitioner's plant in Oxnard, California, within this judicial circuit. The Board's decision and order are reported in 112 N. L. R. B. No. 21.

## COUNTERSTATEMENT OF THE CASE

As more fully explained in the Board's brief (pp. 2–5) in No. 14840 on this Court's docket (*Santa Clara Lemon Association* v. *N. L .R. B.*), this is one of five cases before the Court in which the Board found that the employers, a group of independent nonprofit cooperatives engaged in processing and packing of citrus fruit in Southern California,[2] each committed unfair labor practices by refusing to deal with the Union[3] which the Board certified as the representative of its employees, and also by unilaterally granting wage increases. Specifically, the Board based its unfair labor practice findings in this case on (1) petitioner's refusal to meet or deal further with the Union when, about four months after certification of the Union by the Board, it received a petition signed by a majority of its employees purporting to repudiate the Union as their bargaining representative, and (2) petitioner's subsequent conduct in increasing wages without negotiating with the Union. The evidentiary facts upon which the Board based its findings in this case may be summarized as follows:

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[2] Petitioner, herein sometimes referred to as Seaboard, operates a packing plant in Oxnard, California, from which it ships a substantial amount of citrus fruit into interstate commerce (R. 41; 93). No jurisdictional issue is presented.

[3] United Fresh Fruit & Vegetable Workers Union, L. I. U. No. 78, CIO, herein called the Union.

### I. The Board's findings of fact

Following a representation election held pursuant to a consent election agreement (R. 1–5) at which the Union won a majority of the votes of Seaboard's employees, the Board certified the Union as bargaining representative of Seaboard's employees on November 13, 1953 (R. 42; 8–9). Thereafter, beginning on January 19, a series of seven meetings were held between Seaboard and the Union for the purpose of negotiating a collective bargaining agreement (R. 44; 97, 99–101). At these meetings the parties discussed the provisions of a proposed contract submitted by the Union and several counterproposals made by Seaboard (R. 44–45; 97–103). Tentative agreement was reached with respect to some matters, but no final contract was concluded (R. 45; 97, 102–103). The subject of wages was not discussed at these meetings (R. 45; 98–99). During the course of the seventh meeting, held on March 25, 1954, a uniformed constable interrupted negotiations to serve on Clarence Sewell, Seaboard's manager, a petition, signed by a majority of Seaboard's employees, in which they stated that they "no longer wish to be represented by the Union," and requested that thenceforward a committee of five named employees be recognized by Seaboard as their representative "in all bargaining matters" (R. 46; 101, 103–104, 24–25).

Manager Sewell, upon receiving the petition, immediately consulted with Seaboard's attorney, who was present at the meeting, and then told the Union representatives that negotiations would be suspended until he had checked the names on the petition against

a payroll list (R. 47; 101–102). Syd Rose, a Union field representative, replied that although the Union "had no objection to the checking of the petition," negotiations should nonetheless continue in view of the fact that the Union remained the certified bargaining representative (*ibid.*). Seaboard's representatives, however, declined to continue with negotiations, and the meeting ended (*ibid.*).

On March 29, 1954, counsel for Seaboard informed the Union by letter that "the signatures on the petition * * * all appear to be genuine" and that Seaboard would therefore "recognize the petition to the extent required by law" (R. 47–48; 35). The Union replied by mail on the following day, stating that its certification as bargaining representative of Seaboard's employees "is still valid," and requesting "resumption of collective bargaining at the earliest possible moment * * *" (R. 48; 35–36). Seaboard, however, refused to bargain or deal further with the Union (R. 48; 15).

On April 2, 1954, a few days after Seaboard broke off negotiations with the Union, it increased wages, without notifying or consulting with the Union, in amounts ranging from 20 to 30 cents an hour (R. 54; 94, 104–105).

### II. The Board's conclusions and order

Upon the foregoing facts the Board concluded that Seaboard had violated Section 8 (a) (5) and (1) of the Act by refusing to negotiate with the Union and by unilaterally increasing wages (R. 65–66). To remedy the foregoing violations, the Board's order

requires Seaboard to cease and desist from refusing to bargain with the Union, under its new name acquired upon affiliation with the Packinghouse Workers of America,[4] and from interfering in any related manner with its employees in the exercise of their right to organize and bargain through a union of their choice; affirmatively, the Board's order requires Seaboard to bargain collectively with the Union, as now affiliated, and to post appropriate notices (R. 66–68).

## ARGUMENT

### The Board's finding that petitioner violated Section 8 (a) (5) and (1) of the Act and its order requiring petitioner to bargain with the Union as now affiliated are valid and proper

Seaboard apparently concedes the correctness of the Board's ruling that it violated Section 8 (a) (5) and (1) of the Act by refusing to bargain with the Union upon receipt of the petition by which a majority of the employees purported to revoke the authority of the Union to represent them. See *Ray Brooks* v. *N. L. R. B.,* 348 U. S. 96 Thus, Seaboard makes only two contentions respecting the Board's findings and order: (1) that Seaboard was warranted in granting a wage increase without notifying or consulting the Union because bargaining negotiations had been "suspended" during the period that the propriety of Seaboard termination of negotiations was being adjudicated (Br. 6–8), and (2) that the Union's affiliation with

[4] As fully explained in the Board's brief (pp. 13–15) in No. 14840, to which we respectfully refer the Court, the Union affiliated in July 1954 with the United Packinghouse Workers of America, CIO, and its certification as representative of Seaboard's employees was thereafter amended accordingly. (See R. 29–34.)

the Packinghouse Workers resulted in the formation of a new and different union from that certified by the Board, and that the Board's order is therefore invalid insofar as it requires Seaboard to bargain with the Union as now affiliated (Br. 5–6). These contentions are identical both in point of fact and law with those made by petitioner and fully discussed by the Board in its brief in Case No. 14840. Accordingly, rather than repeat the same discussion here, we respectfully refer the Board to the Board's brief in No. 14840 (pp. 25–38) for a statement of the reasons why we believe both contentions should be rejected.

## CONCLUSION

The Board respectfully requests that its order be enforced in full.

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